Md Yusoff bin Ahmad v Siti Hajar bt Sarkawi & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02–773 OF 2011
SYED AHMAD HELMY, BALIA YUSOF JJCA AND MAH WENG KWAI J
6 JUNE 2012

Companies and Corporations — Meetings — Extraordinary general meeting '(EGM') — Whether holding of EGM in Shah Alam instead of Malacca invalidated meeting — Whether procedural irregularity had caused injustice to appellant — Companies Act 1965 s 145A

Companies and Corporations — Shares — Transfer of — Appellant transferred shares to second respondent — Whether transfer was in breach of procedural requirements — Whether share transfer form was voluntarily signed by appellant — Whether second respondent had provided consideration in money or money's worth — Contracts Act 1950 s 24

Words and Phrases — 'shall' — Whether word 'shall' implied mandatory obligation — Companies Act 1965 s 145A

As founder directors and shareholders of Karisma Selatan Engineering (M) Sdn Bhd ('the company'), Md Yusoff bin Ahmad ('the appellant') held 51% and Siti Hajar bt Sarkawi ('the first respondent') 49% of the shares in the company. The appellant and the first respondent agreed to transfer part of their shareholding to Roslawati bt Ramly ('the second respondent') so that all three of them would hold an equal number of shares in the company. Accordingly, the appellant executed a share transfer form ('STF') transferring 88,332 of his shares in the company to the second respondent, while the first respondent executed a STF transferring 78,334 of her shares in the company to the second respondent. After the transfer of the shares the appellant became antagonistic towards the respondents and effected numerous changes in the affairs of the company by passing circular resolutions. When the respondents discovered the existence of the resolutions and discovered that the appellant had passed a resolution for the removal of the first respondent as director of the company, they requisitioned for an EGM. The purpose of the EGM was, inter alia, to remove the appellant as director, to reinstate the first respondent as director and to appoint the second respondent as a director of the company. The appellant did not attend the EGM and the resolutions tabled at the EGM were passed without opposition. However, after the resolutions were passed at the EGM, the

appellant filed a suit whereby he sought declaratory relief relating to his shareholding in the company and sought to invalidate the EGM on the grounds that it was held in the state of Malacca. The respondents filed their counterclaim seeking declaratory relief that the appellant, the first and second respond respondents each held one-third of the shareholding of the company and that the EGM was validly held. The appellant then withdrew his claim a day before the trial but the respondent proceeded to trial on their counterclaim. The trial judge found that the EGM was validly held and thus allowed the respondents' counterclaim. This was the appellant's appeal against that decision on the grounds that the trial judge had failed to consider the effect of s 145A of the Companies Act 1965 ('the Act') in arriving at his decision that the EGM was valid, and that the transfer of his part of the shares to the second respondent was invalid as the purported transfer was in breach of the procedural requirements as well as in breach of s 24 of the Contracts Act 1950.

Held, dismissing the appeal with costs:

(1) The holding of the EGM in Shah Alam instead of in Malacca did not invalidate the meeting. There was no evidence to show that any undue hardship was caused to the appellant by a change of the venue. It seemed the appellant did not attend the EGM not because it was held in Shah Alam, which was only a 2-hour drive from Malacca, but because he chose not to. Further the appellant had not raised the issue of the purported contravention of s 145A of the Act. As the objection to the change of venue was not specifically pleaded by the appellant, he could not now be heard to complain about the non-compliance with s 145A of the Act, which appeared to be an afterthought for the purposes of the appeal. In any event, the alleged non-compliance with s 145A of the Act was a procedural irregularity which had not caused any injustice to the appellant. This irregularity or defect could be cured by s 355 of the Act and accordingly the EGM could be validated in the circumstances. Thus, although the trial judge had not dealt with s 145A of the Act, he had not erred in law when he held that the EGM convened in Shah Alam was valid (see paras 26–28).

(2) Ordinarily the use of the word 'shall' implied a mandatory obligation but that was not an absolute rule in all cases. In view of the explanation given in cl 16 of the Explanatory Note to the Companies (Amendment) Bill 1969, which explained the object of the amendment to s 145A of the Act, the word 'shall' in s 145A ought to be read as being directory in nature and not mandatory (see paras 29–31).

(3) The appellant's STF evincing his intention to transfer part of his shares to the second respondent was valid. The alleged procedural defects in the STF were not even stated in the appellant's memorandum of appeal as a ground of appeal. Further, the fact that the appellant had signed the STF,

even though he claimed he could not remember signing the same and the company secretary, an independent witness, had confirmed that the appellant had signed the STF in his presence and also paid the stamp duty payable proved that the appellant had signed the STF voluntarily (see paras 34–38).

(4) As consideration for the transfer of part of the appellant's shares to the second respondent, the latter had agreed to secure the contract from the Malaysian government for the company to run a national service training programme. When the second respondent had performed her obligation a valid contract was concluded between her and the appellant and first respondent. Thus, although the second respondent had not paid the consideration stated in Ringgit to the appellant, the value of her efforts in personally securing the contract from the Malaysian government for the company represented the value of her consideration. Thus, there was no breach of the provisions of s 24 of the Contracts Act 1950 by the second respondent (see para 36(e)).

(5) Although there was no company resolution passed for the transfer of the shares by the appellant to the second respondent and there was no issuance of the share certificate at the material time, this did not invalidate the STFs. As at the date of the EGM, the record of the registrar of companies showed that the appellant and the respondents were one-third owners of the shares of the company. In the circumstances of the case, the trial judge had not erred in law or in fact in granting the declaratory orders sought by the respondents (see paras 36(g)–(i)).

[Bahasa Malaysia summary

Sebagai pengarah dan pemegang saham pengasas Karisma Selatan Engineering (M) Sdn Bhd ('syarikat'), Md Yusoff bin Ahmad ('perayu') memegang 51% dan Siti Hajar bt Sarkawi ('responden pertama') 49% daripada saham syarikat. Perayu dan responden pertama bersetuju memindah milik sebahagian daripada pegangan saham mereka kepada Roslawati bt Ramly ('responden kedua') agar ketiga-tiga mereka memegang jumlah saham yang sama dalam syarikat itu. Selanjutnya, perayu telah menyempurnakan pemindahmilikan borang saham ('PBS') dengan memindah milik 88,332 sahamnya dalam syarikat kepada responden kedua, manakala responden pertama menyempurnakan PBS dengan memindah milik 78,334 sahamnya dalam syarikat kepada responden kedua. Selepas pindah milik saham-saham tersebut perayu bersikap antagonis terhadap responden-responden dan menyebabkan pelbagai perubahan dalam urusan syarikat dengan meluluskan resolusi-resolusi pekeliling. Apabila responden-responden mengetahui tentang kewujudan resolusi-resolusi tersebut dan mendapat tahu bahawa perayu telah meluluskan resolusi untuk penyingkiran responden pertama sebagai pengarah syarikat, mereka memohon diadakan mesyuarat luar biasa ('MLB'). Tujuan MLB adalah, antara lain, untuk menyingkir perayu sebagai pengarah, untuk

mengembalikan jawatan responden pertama sebagai pengarah dan untuk melantik responden kedua sebagai pengarah syarikat itu. Perayu tidak menghadiri MLB itu dan resolusi-resolusi yang dibentangkan di MLB itu telah diluluskan tanpa bantahan. Walau bagaimanapun, selepas resolusi-resolusi tersebut diluluskan di MLB, perayu telah memfailkan guaman di mana dia memohon relief deklarasi berkaitan pegangan sahamnya dalam syarikat itu dan memohon untuk menjadikan MLB itu tidak sah atas alasan bahawa ia telah diadakan di negeri Melaka. Responden-responden telah memfailkan tuntutan balas mereka dengan memohon relief deklarasi bahawa perayu, responden-responden pertama dan kedua masing-masing memegang satu pertiga dalam pegangan saham syarikat itu dan bahawa MLB itu telah diadakan dengan sah. Perayu kemudian menarik balik tuntutannya sehari sebelum perbicaraan tetapi responden meneruskan tuntutan balas mereka dibicarakan. Hakim perbicaraan mendapati bahawa MLB itu telah diadakan dengan sah dan oleh itu membenarkan tuntutan balas responden-responden. Ini adalah rayuan perayu terhadap keputusan tersebut atas alasan bahawa hakim perbicaraan telah gagal mengambil kira kesan s 145A Akta Syarikat 1965 ('Akta tersebut') apabila membuat keputusa beliau bahawa MLB adalah sah, dan bahawa pindah milik bahagian sahamnya kepada responden kedua adalah tidak sah kerana pindah milik yang dimaksudkan itu melanggar keperluan prosedur dan juga melanggar s 24 Akta Kontrak 1950.

Diputuskan, menolak rayuan dengan kos:

(1) MLB yang diadakan di Shah Alam dan bukan di Melaka tidak menjadikan mesyuarat itu tidak sah. Tiada bukti menunjukkan bahawa terdapat kesukaran dihadapi oleh perayu dengan pertukaran tempat itu. Perayu tidak menghadiri MLB itu bukan kerana ia diadakan di Shah Alam, yang hanya 2-jam perjalanan kereta dari Melaka, tetapi kerana dia memilih tidak berbuat begitu. Selanjutnya perayu tidak menimbulkan isu yang bertentangan s 145A Akta tersebut. Oleh kerana bantahan terhadap pertukaran tempat tidak diplid secara spesifik oleh perayu, dia tidak boleh lagi didengar untuk mengadu berhubung ketidakpatuhan s 145A Akta tersebut, yang kelihatan seperti suatu yang difikirkan kemudian bagi tujuan rayuan itu. Dalam apa keadaan, ketidakpatuhan s 145A Akta tersebut yang dikatakan adalah luar aturan prosedur yang tidak menyebabkan apa-apa ketidakadilan kepada perayu. Luar aturan atau kecacatan ini boleh dipulihkan oleh s 355 Akta tersebut dan oleh demikian MLB boleh disahkan dalam keadaan. Oleh itu, meskipun hakim perbicaraan tidak membincangkan s 145A Akta tersebut, beliau tidak terkhilaf di sisi undang-undang apabila beliau memutuskan bahawa MLB yang diadakan di Shah Alam adalah sah (lihat perenggan 26–28).

(2) Kebiasaannya penggunaan perkataan 'hendaklah' bermaksud tanggungjawab mandatori tetapi bukan rukun mutlak dalam semua kes.

Berdasarkan penjelasan yang diberikan dalam fasal 16 Nota Penjelasan kepada Rang Undang-Undang Syarikat (Pindaan) 1969, yang menjelaskan objektif pindaan kepada s 145A Akta tersebut, perkataan 'hendaklah' dalam s 145A patut dibaca sebagai yang bersifat arahan dan bukan mandatori (lihat perenggan 29–31).

(3) PBS perayu yang menampakkan niatnya untuk pindah milik bahagian sahamnya kepada responden kedua adalah sah. Kecacatan prosedur yang dikatakan dalam PBS itu tidak dinyatakan dalam memorandum rayuan perayu sebagai satu alasan rayuan. Tambahan pula, fakta bahawa perayu telah menandatangani PBS itu, meskipun dia mendakwa tidak ingat menandatanganinya dan setiausaha syarikat, saksi bebas, telah mengesahkan bahawa perayu telah menandatangani PBS itu dengan kehadirannya dan juga membayar duti setem yang perlu dibayar membuktikan bahawa perayu telah menandatangani PBS itu dengan sukarela (lihat perenggan 34–38).

(4) Sebagai balasan untuk pindah milik saham perayu kepada responden kedua, responden kedua telah bersetuju untuk menjamin kontrak dari kerajaan Malaysia untuk syarikat itu menjalani program latihan khidmat negara. Apabila responden kedua telah melaksanakan tanggungjawabnya satu kontrak sah telah dilaksanakan antaranya dan perayu dan responden pertama. Oleh itu, meskipun responden kedua tidak membayar balasan yang dinyatakan dalam Ringgit kepada perayu, nilai usahanya yang secara peribadi menjamin kontrak dari kerajaan Malaysia untuk syarikat itu menunjukkan nilai balasannya. Dengan itu, tidak ada pelanggaran peruntukan s 24 Akta Kontrak 1950 oleh responden kedua (lihat perenggan 36(e)).

(5) Walaupun tiada resolusi syarikat diluluskan untuk pindah milik saham oleh perayu kepada responden kedua dan tiada keluaran sijil saham pada masa itu, ini tidak menjadikan PBS tersebut tidak sah. Pada tarikh MLB itu, rekod pendaftar syarikat menunjukkan bahawa perayu dan responden-responden merupakan pemilik satu pertiga saham syarikat itu. Dalam keadaan berikut, hakim perbicaraan tidak terkhilaf dari segi undang-undang atau fakta dalam memberikan perintah-perintah deklarasi yang dipohon oleh responden-responden (lihat perenggan 36(g)–(i)).]

Notes

For a case on extraordinary general, see 3(1) *Mallal's Digest* (4th Ed, 2011) para 502.

For cases on transfer of shares, see 3(1) *Mallal's Digest* (4th Ed, 2011) paras 1019–1048.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770, CA (refd)
State of Haryana v Raghubir Dayal [1995] SCC (1) 133, SC (refd)

Legislation referred to

Companies (Amendment) Bill 1969
Companies (Amendment) Act 1997
Companies (Amendment) Act 1966
Companies Act 1965 ss 103, 104, 106, 145A, 355
Contracts Act 1950 s 24

Appeal from: Civil Suit No D3–22–291 of 2006 (High Court, Kuala Lumpur)

Mohd Iqbal bin Zainal Abidin (Megat Iqbal & Co) for the appellant.
Karen Cheah (Fatima Tan & Cheah) for the respondents.

Mah Weng Kwai J (delivering judgment of the court):

BRIEF FACTS

[1] On 1 September 2004 Karisma Selatan Engineering (M) Sdn Bhd ('the company') obtained a contract from the Government of Malaysia to manage the National Service Training Center at Kem Kuala Pilah ('the camp') in Negeri Sembilan.

[2] The appellant and the first respondent are the founding directors and shareholders of 254,999 (51%) and 244,999 (49%) shares respectively in the company as at 24 May 2004. The share capital was increased from 100,000 shares to 500,000 shares at an extraordinary general meeting of the company ('EGM') held on 2 July 2004.

[3] The company has been operating the camp since 2004 but no dividends or benefits have been declared or given to the respondents.

[4] The company and the camp were in the control and possession of the appellant at the time of the trial.

[5] The Government of Malaysia paid the company on an average, a sum of about RM500,000 for running the camp per session. Several camp sessions were held in a year. The provision of food and accommodation and facilities for

the various activities for the trainees seldom exceeded RM150,000 per camp session and the company made reasonable profits.

[6] The appellant and the first respondent agreed to transfer part of their shareholding to the second respondent so that all three of them would hold an equal number of shares in the company as the second respondent was instrumental in securing the licence for the camp for the company. The share transfer form (STF) for this purpose was signed by the appellant and the first respondent on 23 October 2004 in the presence of the then company secretary. The appellant agreed to transfer 88,332 shares of RM1 each and the first respondent likewise agreed to transfer 78,334 shares in the company to the second respondent. The STFs were stamped on 5 November 2004.

[7] However, the appellant who was effectively managing the affairs of the company, was not happy after the transfer of his shares to the second respondent and adopted an antagonistic position towards the respondents.

[8] From February 2006, the appellant in his efforts to wrest control of the company, caused the then company secretary to effect numerous changes in the board of directors and in the affairs of the company. The main changes were, inter alia:

(a) certified a circular resolution accepting the resignation of the first respondent as a director, when the first respondent had no intention of resigning;

(b) altered the signatories of the company's bank account with Affin Bank and appointed himself as the sole signatory of the account;

(c) appointed one Sabri bin Ahmad as a director to replace the fist respondent; and

(d) replaced the company secretary.

[9] The appellant was able to pass the circular resolutions pursuant to articles 5 and 90 of the articles of association of the company as the first respondent had been wrongfully removed as a director of the company.

[10] The respondents only discovered the existence of the resolutions and the removal of the first respondent as a director of the company after a search was made on the company with *Suruhanjaya Syarikat Malaysia* on the complaint by the second respondent over the delay in the issuance of the share certificate to her.

[11] As at 24 November 2005, the appellant, the first and second

respondents each held 166,666 shares in the company as can be seen in the form of annual return of a company having a share capital.

[12] On 12 April 2006 the respondents being members holding not less than one tenth of the paid up capital, requisitioned for an EGM to be held for the purpose of, inter alia, removing the appellant as a director, to reinstate the first respondent as a director and to appoint the second respondent as a director of the company. On 16 May 2006, the respondents gave notice to the company and the company secretary that the EGM would be held at Hotel Concorde, Shah Alam on the 24 May 2006.

[13] The appellant did not attend the EGM and resolutions tabled at the EGM were passed without opposition.

[14] Following the resolutions passed at the EGM to reinstate the first respondent as a director and to appoint the second respondent as a director of the company, the appellant filed a suit seeking declaratory relief relating to his shareholding in the company and to invalidate the EGM on the ground that it was not held in the State of Malacca.

[15] The respondents filed their counterclaim also seeking declaratory relief that the appellant, the first and the second respondents each held 1/3 of the shareholding of the company and that the EGM was validly held.

[16] The appellant withdrew his claim against the respondents a day before the trial. The respondents proceeded to trial on their counterclaim and called seven witnesses. The appellant elected not to give evidence himself nor to call any witnesses in defence to the counterclaim. The learned High Court judge after a full trial of the counterclaim allowed the respondents' claim on 18 February 2011.

[17] Being dissatisfied with the decision of the High Court judge, the appellant appealed to the Court of Appeal.

GROUNDS OF APPEAL

[18] Essentially, the appellant had two grounds of appeal namely:

(a) that the EGM was invalid as it was held in Shah Alam, Selangor and not in Malacca where the registered address of the company was, in contravention of s 145A of the Companies Act 1965 ('CA'); and

(b) that the transfer of the shares to the second respondent was not valid as the STF was not properly registered and that the consideration was doubtful.

A DECISION OF THE COURT

[19] Upon reading the record of appeal and the written submissions and upon hearing the oral submissions of counsel, the court dismissed the appeal with costs.

B GROUNDS OF DECISION

First issue: whether the EGM was invalid

C **[20]** Counsel for the appellant submitted that the learned judge failed to consider the effect of s 145A of the CA as at 24 May 2006, in coming to his decision.

D **[21]** Section 145A reads:

> Place of meetings
>
> Where any meeting (including the adjourned meeting) is required to be held under this Division, it shall be held in the State where its registered office is situated

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[22] The section was however amended on 15 August 2007 vide the Companies (Amendment) Act 2007.

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[23] Section 145A now reads:

> Venue and technology for company meetings.
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> A Company shall hold all meetings of its members within Malaysia and may hold a meeting of its members within Malaysia at more than one venue using any technology that allows all members a reasonable opportunity to participate.

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H **[24]** Counsel submitted that as the meeting of members (and not a meeting of the Board of Directors) was held prior to the amendment of s 145A, it was mandatory that the meeting be held in Malacca, being the state where the registered office of the company was located and that a meeting held in Shah Alam, Selangor would render the EGM invalid.

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[25] Section 145A of the CA prior to its amendment on 15 August 2007 was inserted vide Companies (Amendment) Act 1966 (Act A21) which came into force on 28 March 1969. Clause 16 of the Explanatory Note to the Companies (Amendment) Bill 1969 explained that 'the object of the amendment was to

compel companies to hold meetings in the state where its registered office is situated and not outside of the Federation thereby protecting the interests of members of the company resident in Malaysia'. A

[26] The court is of the view that the holding of the EGM in Shah Alam did not invalidate the meeting. The holding of the meeting in Shah Alam instead of in Malacca managed to fulfill the object of the amendment which was to ensure that the meeting would not be held outside of the federation so that members would not find it difficult to attend the meeting thereby protecting their interests. B C

[27] There was no evidence to show that any undue hardship was caused to the appellant by a change of the venue. It would appear that the appellant did not attend the EGM not because it was held in Shah Alam which is after all only a two hour drive from Malacca, but that he chose not to. It will also be noted that the appellant had engaged his solicitors who are from Petaling Jaya to act for him in this appeal. D

[28] In the appellant's statement of claim which was withdrawn a day before the trial, no issue was made of the purported contravention of s 145A of the CA. What was disputed by the appellant was only with regard to the notice of the EGM. As the objection to the change of venue was not specifically pleaded by the appellant, the appellant cannot now be heard to complain about the non-compliance of s 145A (pre amendment), which appears to be an afterthought for purposes of the appeal. E F

[29] The court is of the view that given the explanation in cl 16 of the Explanatory Note to the Companies (Amendment) Bill 1969, the word 'shall' in s 145A is to be read as being directory in nature and not mandatory. G

[30] Ordinarily the use of the word 'shall' implies a mandatory obligation but that is not an absolute rule in all cases. In *Bindra, Interpretation of Statutes* (8th Ed), at p 1029–1030 it is stated as follows: H

> The word 'shall' in its ordinary signification is mandatory though there may be considerations which influence the Court in holding that the intention of the Legislature was to give discretion. *But this word is not necessarily mandatory, nor always mandatory*. Whether the matter is mandatory or directory only depends upon the real intention of the Legislature which is ascertained by carefully attending to the whole scope of the statute to be construed. I
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> *The use of the word 'shall' would not by itself make a provision of the Act mandatory. It is to be construed with reference to the context in which it is used*. Similarly, mere use of the word '*shall*' or the absence of it, does not decide the question whether a provision *is directory or mandatory*.

> When a statute uses the word 'shall' prima facie, it is mandatory, but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provision, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow there from, and, above all, whether the object of the legislation will be defeated or furthered.

[31] In the case of *State of Haryana v Raghubir Dayal* [1995] SCC (1) 133, the Supreme Court of India had occasion to observe as follows:

> The word *'shall' is ordinarily mandatory but it is sometimes not so interpreted* if the scope of the enactment, or consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory *but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon*. The word 'shall' therefore, ought to be construed not according to the language with which it is *clothed but in the contex*t in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word, 'shall as mandatory or as directory, accordingly.

[32] In any event the alleged non-compliance of s 145A is a procedural irregularity which has not caused any injustice to the appellant. This irregularity or defect can be cured by s 355 of the CA and accordingly the EGM can be validated in the circumstances. The appellant bears the burden of proving that he has suffered substantial injustice from the 'procedural irregularity' but has failed to do so. (see *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770).

[33] The learned judge did not err in law when he held that the EGM convened in Shah Alam was valid notwithstanding that the learned judge did not deal with s 145A in his judgment.

Second issue: whether the share transfer of 23 October 2004 was valid

[34] The appellant contended that the transfer of part of his shares to the second respondent was invalid as the purported transfer was in breach of the procedural requirements under ss 103–104 and 106 of the CA, that the STF (Form 32A) was not certified by the company and that the transfer was not registered prior to the respondents' counterclaim.

[35] Further, the appellant contended that the consideration for the transfer was in breach of s 24 of the Contracts Act 1950 in that the consideration was not paid in cash although it was stated to be so on the STF.

[36] The court is of the view that the appellant's STF dated 23 October 2004 is valid, envincing the appellant's intention to transfer part of his shares to the second respondent, on the following grounds:

(a) to begin with, the procedural defects in the STF complained of by the appellant were not even stated in his memorandum of appeal as a ground of appeal and hence catching the respondents by surprise;

(b) the learned judge found as of fact that the appellant did sign the STF in favour of the second respondent. The learned judge rejected the appellant's testimony that he could not remember whether he had signed the STF;

(c) the evidence of the company secretary (DW4), an independent witness, confirmed that the STF was signed by the appellant in his presence at his office in Graha Maju, Malacca on 23 October 2004 and that the stamp duty payable on the STF was in fact paid by the appellant himself;

(d) insofar as the consideration for the transfer of shares was concerned, the appellant based his challenge on the contravention of s 24 of the Contracts Act 1950 whereas in his submissions counsel for the appellant confined his challenge to procedural irregularities;

(e) the consideration for the transfer of part of the appellant's shares to the second respondent was that the second respondent would help secure the contract from the Government of Malaysia for the company to run the National Service Training Camp. The second respondent had performed her obligation and there was a valid contract concluded with the appellant and the first respondent. No doubt the second respondent did not pay any money to the appellant for her portion of the shares but it will be noted that the consideration sum stated on the STF was RM88,332 which coincided with the number of shares (at the par value of RM1 each) that the appellant had previously agreed to transfer to the second respondent. The consideration stated although not paid in Ringgit to the appellant was meant to represent the value of the second respondent's efforts (in so far as the appellant was personally concerned) in securing the contract from the Government of Malaysia for the company. In the circumstances, the court is of the view that there was no breach of the provisions of s 24 of the Contracts Act by the second respondent;

(f) the appellant failed to discharge his burden to prove that the signature was not his;

(g) the annual return of the company as at 24 November 2005 showed that

A the appellant, the first and the second respondents were each holding 166,666 shares in the company and as such by the time the EGM was held on 24 May 2006 the respondents were regarded as the lawful owners of their respective shares;

B (h) although the share certificates had not been issued by 24 May 2006, this did not invalidate the STFs of 23 October 2004; and

(i) the record of the registrar of companies as at 24 March 2006 showed that the appellant and the respondents are 1/3 owners of the shares of the company. (see *rekod rayuan Jld* 6 p 692).

C

CONCLUSION

D **[37]** The court is of the view that the learned judge did not err in law or in fact in granting the declaratory orders sought by the respondents, notwithstanding that no company resolution was passed for the transfer of the shares by the appellant to the second respondent and that there was no issuance of share certificate at the material time.

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[38] The court was fully satisfied that the appellant had signed the STF voluntarily envincing his intention to transfer the shares to the second respondent.

F **[39]** In the result the appeal was dismissed with costs of RM20,000.

Appeal dismissed with costs.

Reported by Kohila Nesan

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